

Amendment No. 2 to HB1421

**Fitzhugh
Signature of Sponsor**

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Comm. Amdt. _____

AMEND Senate Bill No. 1933*

House Bill No. 1421

by adding the following language at the end of Section 4, subdivision (11)(A)(i):

provided, however, upon the adoption of a resolution by the governing authority of the municipality or county, and notice of such resolution sent to the department, gross revenues may include the franchise fees; the governing authority of the municipality or county may likewise, by adopting a resolution, rescind such action;

AND FURTHER AMEND Section 5(b) by adding the following language as new subdivisions:

(3)

(A) If an incumbent cable service provider or entity or person who chooses to terminate its local franchise agreement to obtain a state-issued certificate of franchise authority as provided in Section 5(b)(1) is providing to a municipality or county an institutional data network funded pursuant to such local franchise agreement, however defined or referenced in the local incumbent franchise but generally including private line data network capacity for noncommercial purposes that is:

(i) In existence as of January 1, 2008; and

(ii) Funded via a line item per subscriber charge;

then the incumbent cable service provider shall continue to provide such data network and a holder of a state-issued certificate of franchise authority serving such municipality or county is required to remit to the affected municipality or county the same per subscriber charge collected by the incumbent cable provider until the natural termination date of the local franchise.

(B) All cable and video service providers, including a holder of a state-issued certificate of franchise authority, may designate that portion of the subscriber's bill attributable to any payment required under this subdivision as a separate item on the bill for recovery of such amount from the subscriber. Such fees shall be collected by the cable or video service provider or holder of a state-issued certificate of franchise authority and paid to the municipality or county. Such municipality or county shall then remit or otherwise provide credit to the incumbent cable provider in a manner consistent with the local franchise agreement.

(4) For any other institutional data networks in existence and provided by an incumbent cable provider on January 1, 2008, the incumbent cable provider shall continue to provide and fund such institutional network as set forth in its local franchise agreement and may petition the department for an order requiring all cable and video service providers and holders of state-issued certificates of franchise authority whose service area includes the affected municipality or county to contribute to the funding of such institutional network on a per subscriber basis in such municipality or county and to approve the appropriate per subscriber charge. To obtain such an order, the incumbent cable provider shall demonstrate to the department that it had the right to recover its costs on a per subscriber basis under its local franchise agreement and shall also demonstrate the reasonable recovery cost, consistent with its local franchise agreement and consistent with applicable federal law, relating to such institutional network. The department shall review and establish the accuracy of such information provided by the incumbent cable provider after notice and an opportunity for any provider or holder who may, under this subdivision, be required to contribute, to challenge such information before the department.

AND FURTHER AMEND by deleting the language of Section 6(b) in its entirety, and by substituting instead the following language:

(b) The department shall impose a fee in accordance with the following schedule:

(1) With respect to applications for a state-issued certificate of franchise authority the fee shall be based on the population of the service area(s) applied for in accordance with the most recent decennial census as follows:

- (i) Up to and including 50,000 -- \$500;
- (ii) Over 50,000 up to and including 100,000 -- \$1,000;
- (iii) Over 100,000 up to and including 500,000 -- \$2,000;
- (iv) Over 500,000 up to and including 1,000,000 -- \$5,000;
- (v) Over 1,000,000 up to and including 2,000,000 -- \$10,000;

and

- (vi) Over 2,000,000 -- \$15,000.

(2) With respect to amendments the fee shall be based upon the populations of the service area(s) in accordance with the most recent decennial census as follows:

- (i) Up to and including 50,000 -- \$250;
- (ii) Over 50,000 up to and including 1,000,000 -- \$500; and
- (iii) Over 1,000,000 -- \$1,000.

AND FURTHER AMEND by inserting the following language as a new, appropriately designated subdivision to Section 6 (c):

() That the application includes a minority owned business participation plan and the applicant agrees to comply with the provisions of such plan in accordance with Section 14. The minority owned business participation plan shall be attached to and become a part of the application when the application is submitted.

AND FURTHER AMEND by deleting Section 6(f) in its entirety and by substituting instead the following language:

(f)

(1) The state-issued certificate of franchise authority issued by the department shall be for a term of ten (10) years. Upon the expiration of the initial term, the holder of a state-issued certificate of franchise authority may reapply pursuant to the process set forth in this section.

(2)

(A) The holder of a state-issued certificate of franchise authority shall, as a condition of maintaining such franchise authority, pay an annual fee as provided in this subdivision to cover the direct costs of the department in administering the provisions of Sections 9 and 13 regarding the resolution of any complaints filed with the department. The holder of a state-issued certificate of franchise authority may designate that portion of the subscriber's bill attributable to the fee established by this subsection and recover such amount from the subscriber as a separate item on the bill.

(B) For the fiscal year ending on June 30, 2009, such annual fee shall be collected in the aggregate from all holders of a state-issued certificate of franchise authority and shall not exceed one hundred seven thousand dollars (\$107,000). In order to fairly assess such fee, the department shall calculate the total number of subscribers obtaining service from holders of a state-issued certificate of franchise authority based on quarterly franchise fee statements as of the end of the second quarter each year provided pursuant to Section 7. Based on such calculation, the department shall assess each holder of a state-issued certificate of franchise authority a percentage of the amount established in this subdivision for the fiscal year ending on June 30, 2009, to be paid to the department by each holder within thirty (30) days of the date the department notifies the holder of the holder's share of the annual fee. The annual fees for 2009 shall be assessed on July 31, 2009. The

percentage shall be calculated by dividing the holder's number of cable or video subscribers served under a state-issued certificate of franchise authority by the total number of cable or video subscribers of all holders served under all state-issued certificates of franchise authority.

Notwithstanding such provisions, any payments collected from the state-issued certificate of franchise authority application fees and amendment fees shall be applied to reduce the annual fee required by this subsection.

In addition, no holder of a state-issued certificate of franchise authority shall be assessed any amounts attributable to enforcement actions directed against another holder of a state-issued certificate of franchise authority other than those arising under Section 9.

(C) For subsequent fiscal years, by September 15 of each year, the comptroller shall review the amount assessed in the previous fiscal year and make a determination as to whether such annual fee should be increased or decreased based on the following factors:

(i) The actual administrative costs incurred by the department in connection with the reasonable performance of its duties established in Sections 9 and 13;

(ii) The actual number of cable or video-related complaints handled by the department;

(iii) The complexity of cable or video-related complaints handled by the department;

(iv) The amount of application and amendment fees collected by the department;

(v) The amount of personnel time necessary to accomplish the functions of the department relating to holders of state-issued certificates of franchise authority; and

(vi) Any other factors deemed essential by the comptroller to certify a fair annual assessment amount.

The comptroller shall certify the annual fee for each fiscal year and notify the department of the maximum annual fee which may be assessed to all holders of a state-issued certificate of franchise authority based on the calculation established in subdivision (B), which fee, if an increase as certified by the comptroller, shall in no event increase by more than five percent (5%) from the previous year's annual fee.

AND FURTHER AMEND by deleting the second sentence in its entirety from Section 7(d)(2)(A).

AND FURTHER AMEND by deleting the language "results in a final determination by the department" from Section 7(d)(5) and (e)(3), and by substituting instead the language "results in a final and unappealable determination by the department".

AND FURTHER AMEND Section 10(k) is amended by deleting the subsection in its entirety and by substituting instead the following language:

(k)

(1) Notwithstanding Section 8(c), an incumbent cable service provider that provides free cable service to schools or government offices in a municipality or county on the effective date of this act shall be required to continue to provide such free service to those locations until the natural termination date of the local franchise agreement, provided that the municipality or county provides the incumbent with a list of locations where such free service is provided as of such effective date. Any other cable or video service provider or holder of a state-issued certificate of franchise authority that serves the same municipality or county as an incumbent cable service provider that is offering free cable service as provided for in this subsection shall provide a comparable level of free cable or video service to the same locations as listed by the municipality or county until the natural termination date of the incumbent's local franchise agreement.

(2) Notwithstanding the requirements of subdivision (1), all cable or video service providers providing cable or video services in a municipality or county, including all holders of a state-issued certificate of franchise authority providing services under such state-issued certificate, and the municipality or county are authorized to negotiate any other arrangement agreed to by all parties other than meeting the requirements of subdivision (1).

AND FURTHER AMEND Section 11 by deleting subsection (b) in its entirety, and by substituting instead the following language:

(b)

(1) Notwithstanding any provision in this part to the contrary, in cases of new construction or property development where utilities are to be placed underground, each municipality, county or other relevant permitting authority shall establish as a condition to issuing each permit for open trenching to any developer or property owner that such developer or property owner give all providers of cable or video service serving the applicable municipality or county at least sixty (60) days' prior notice of such construction or development, and of the particular dates on which open trenching will be available for such providers' installation of conduit, pedestals or vaults, and laterals, referred to in this subsection as "equipment", to be provided at each such provider's expense.

(2) In the event a developer or property owner fails to give the required notice, the developer or property owner shall be responsible for the cost of new trenching for the installation of the cable or video service provider's equipment.

(3) Each provider shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if any cable or video service provider fails to install its equipment within the dates during which the trenches are scheduled to be open, as designated in the notice given by the developer or property owner, then should the trenches be closed

after such time period, the cost of new trenching is to be borne by such cable or video service provider.

(4) In the event the relevant permitting rules of a municipality, county or other relevant permitting authority require less than sixty (60) days' advance notice to all providers of cable or video service providers service, then the required notice shall be the lesser of sixty (60) days or the number of days prior to construction that the relevant rules require for such advance notice but in no event less than ten (10) days. If a municipality, county or other relevant permitting authority's rules do not specify any minimum advance notice of construction requirements, then the required notice shall be sixty (60) days.

AND FURTHER AMEND by deleting the language "and Section 14 concerning minority, women and disabled veteran-owned business participation plans" from Section 13(a) and by substituting instead the language "and Section 14 concerning minority owned business participation plans".

AND FURTHER AMEND by designating the existing language of Section 13 (d) as (d)(1), by adding the language "or a violation of Section 14" between the language "other than a violation of Section 12(a) or (b)" and the comma in such newly designated subdivision, and by adding the following language as a new subdivision (2) to subsection (d):

(2) Upon a finding by the department that a violation of Section 14 has occurred, the holder of a state-issued certificate of franchise authority shall have a reasonable period of time, as determined by the department, to cure such noncompliance. If the holder of a state-issued certificate of franchise authority fails to cure within the specified time as determined by the department, the department may assess a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000), per violation.

AND FURTHER AMEND by deleting Section 14 in its entirety, as amended by House Commerce Committee Amendment No. 1, drafting code No. 16684, and by substituting instead the following language:

SECTION 14.

(a) For the purposes of this section, unless the context otherwise requires:

(1) "Minority owned business" means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of:

(A) Past practices of discrimination based on race, religion, ethnic background, or sex including, but not limited to, women;

(B) A disability as defined in § 4-26-102 including, but not limited to, disabled veterans; or

(C) Past practices of racial discrimination against African-Americans; and

(2) "Minority owned business participation plan" means a business plan for actively soliciting bids from minority owned businesses and letting contracts to such businesses when establishing, providing or expanding cable or video services and related support facilities. Such plan shall include the following information:

(A) A proposal for purchasing goods and services from minority owned businesses;

(B) Information on programs to provide technical assistance to such businesses; and

(C) A statement of intent to follow its minority owned business participation plan.

(b) A minority owned business participation plan shall strive to maximize participation of minority owned businesses through both prime and second tier

business contracting opportunities and shall strive to achieve a level of minority owned business participation representative of the population demographics of the state of Tennessee.

(c) Notwithstanding any provision of this part to the contrary, a state-issued certificate of franchise authority shall not be issued by the department to any applicant that fails to include a minority owned business participation plan in such applicant's application. The department shall review each application to confirm that the minority owned business participation plan includes all information required pursuant to the provisions of this section.

(d) Notwithstanding any provision of this part to the contrary, the department shall annually review each holder of a state-issued certificate of franchise authority to determine compliance with such holder's minority owned business participation plan. In conjunction with such review, by January 31 of each year, each holder of a state-issued certificate of franchise authority shall prepare and submit an annual report to the department concerning such holder's minority owned business participation plan and compliance with such plan. The department shall annually prepare a compliance report to be delivered to the governor and the clerk of each house of the general assembly. Such compliance report shall also be posted on the web site of the department.

(e) Notwithstanding any provision of this part to the contrary, a holder of a state-issued certificate of franchise authority determined by the department not to be in compliance with such holder's minority business participation plan shall be found in violation of this Section 14 and shall be subject to the provisions of Section 13(d)(2).

AND FURTHER AMEND by deleting the language "the chairman of the senate, labor and agriculture committee" from Section 15, subsection (a)(1) and by substituting instead the language "the chairman of the senate commerce, labor and agriculture committee".

AND FURTHER AMEND Section 17 (c) by deleting subdivision (1) in its entirety, and by substituting instead the following language:

(1) Until July 1, 2018, unless such date is extended by the general assembly, notwithstanding § 65-21-105, in any area of the state determined by the department, in accordance with subsection (d), to be an historically unserved area where there is no access to broadband Internet services, a municipality or cooperatively owned utility shall not receive or request in exchange for new pole attachments any pole attachment charge from a cable or video service provider, or a telecommunications joint venture seeking to provide new broadband Internet services to such area which exceeds fifty percent (50%) of the highest pole attachment rate charged by such municipality or cooperatively owned utility to a cable service provider on January 1, 2008. For purposes of such discounted pole attachment charge for new pole attachments in historically unserved areas, no increase in the underlying pole attachment rate shall raise the discounted rate until July 1, 2018, unless such date is extended by the general assembly. The provisions of this subdivision do not apply to any pole attachment charges for poles where, as of January 1, 2008, the cable or video service provider, or a telecommunications joint venture is paying a pole attachment charge.

AND FURTHER AMEND by inserting a comma between the words “political subdivision” and the word “from” and by inserting a comma after the word “against” in the first sentence of Section 19 subsection (a).